

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**JAMES D. JOHNSON, as next friend to
Olivia Y., et al.**

PLAINTIFFS

vs.

CIVIL ACTION NO.: 3:04-CV-251-TSL-FKB

**PHIL BRYANT, as Governor
of the State of Mississippi, et al.**

DEFENDANTS

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' RENEWED MOTION
FOR CONTEMPT AND FOR THE APPOINTMENT OF A RECEIVER**

Defendants respectfully move this Court for an order finding that Plaintiffs' Renewed Motion for Contempt and for the Appointment of a Receiver ("Motion for Contempt") [Dkt. 622] is not well-taken and should be denied. In support thereof, Defendants submit this Response stating as follows:

1. On March 9, 2015, Plaintiffs filed a Motion for Contempt and supporting Memorandum requesting that this Court find the Defendants in contempt and for the appointment of a general receiver with full authority to administer Mississippi's child welfare system. [Dkts. 622 and 623]

2. On May 22, 2015, this Court entered an Amended Scheduling Order for Plaintiffs' Motion for Contempt [Dkt. 646]. The Amended Scheduling Order provides that "[D]iscovery and the hearing shall be limited to and concern events occurring during Implementation Periods 3 and 4; accordingly, no evidence shall be presented, nor discovery conducted, concerning events that occurred subsequent to June 30, 2014, the final day of Implementation Period 4." [Dkt. 646]

at ¶9. Implementation Period 3 began on July 6, 2012 [Dkt. 571]. Therefore, Plaintiffs' Motion for Contempt is limited to events occurring between July 6, 2012, through June 30, 2014.

3. This Response is supported by a Motion to Strike the Declaration of Marcia Robinson Lowry, which is filed contemporaneously herewith, which requests that the Declaration of Marcia Robinson Lowry be stricken because it only addresses the Correct Order creating a Director for Sustainable Transformation [Dkt. 607] and events occurring subsequent to June 30, 2014. If that Motion to Strike is well taken and granted, Defendants submit that the Court should not consider any portion of the Motion for Contempt that addresses the Corrected Order creating a Director for Sustainable Transformation and related events occurring after June 30, 2014.

4. This Response is also supported by an accompanying Memorandum in Support of Defendants' Response in Opposition to Plaintiffs' Motion for Contempt, which is filed contemporaneously herewith, and incorporated by reference into this Response.

5. As explained more fully in Defendants' accompanying Memorandum, Defendants have, in good faith, made all reasonable efforts to comply with the Modified Settlement Agreement [Dkt. 571] and the cornerstones of a successful child welfare system have been put into place. Thus, the finding of contempt and the appointment of a receiver is neither warranted, nor proper.

2. Defendants submit the following exhibits, which are attached hereto, in support of this Response:

Ex. "A" *David C. v. Leavitt*. No. 93-C-206, slip op. at 25 (D. Utah March 17, 1997).

Ex. "B" Tennessee's April 2015 Modified Settlement Agreement in the *Brian A* lawsuit.

Ex. "C" United States General Accounting Office, Foster Care: Status of the District of

Columbia's Child Welfare System Reform Efforts, published May 5, 2000.

- Ex. "D" *LaShawn A. v. Gray* Progress Report for the Period July 1-December 31, 2013 (May 14, 2014) written by Center for the Study of Social Policy.
- Ex. "E" *David C. v. Huntsman, Jr.*, No. 2:93-CV-00206TC, Order of Dismissal with Prejudice dated Jan. 5, 2009.
- Ex. "F" Affidavit of Mark R. Smith.
- Ex "G" "TFACTS Is A Pricey Failure", *The Chattanooga Times Free Press*, Oct.15, 2012
- Ex. "H" "More Glitches, Costs Reported in DCS Computer System", *The Tennessean*, June 17, 2014
- Ex. "I" June 11, 2014 Report of the *Brian A.* Technical Assistance Committee, "Update on Developments Related to the TFACTS Evaluation Findings and Recommendation".
- Ex. "J" Data Quality Reports for Aug. 2013 through Apr. 2014.
- Ex. "K" Affidavit of Cindy Greer.
- Ex. "L" Affidavit of Jennifer Walker.
- Ex. "M" Monitor's Summary Table: Statewide Performance for Period 4 through June 30, 2014 Based on Analyses of Data Received Through March 24, 2015.
- Ex. "N" MIC Investigation Letter and Plan and Revised Timely Initiation and Completion of MIC Investigations.
- Ex. "O" MIC Reduction Letter.
- Ex. "P" Jan. 15, 2014 Letter from Department of Health & Human Services, Administration on Child, Youth and Families to Richard Berry, Exec. Dir.
- Ex. "Q" June 19, 2014 Letter from Department of Health & Human Services Administration on Child, Youth and Families to Richard Berry, Exec. Dir.
- Ex. "R" DFCS CQI Corrective Action Tracking Process.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court deny Plaintiffs' Motion for Contempt and for the Appointment of a Receiver. Defendants also request such other relief as this Court deems appropriate.

Respectfully submitted, this the 15th day of June, 2015.

s/ Dewitt L. ("Rusty") Fortenberry, Jr.
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CERTIFICATE OF SERVICE

I, Dewitt L. Fortenberry, Jr., do hereby certify that I have on this day, electronically filed a true and correct copy of the forgoing document with the Clerk of Court using the ECF system which sent notifications of such to counsel as follows:

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SO CERTIFIED, this the 15th day of June, 2015.

/s/ Dewitt L. ("Rusty") Fortenberry, Jr.